

HONORABLE JAMES ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LINDSAY DUNN,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
a Delaware Corporation,

Defendant

Court File No.: 2:17-CV-333

**STIPULATION FOR VOLUNTARY
DISMISSAL PURSUANT TO FED.
R. CIV. P. 41**

NOTING DATE: OCTOBER 19, 2017

I. STIPULATION

1. Plaintiff Lindsay Dunn filed a complaint with the Department of Labor—Occupational Safety and Health Administration (“OSHA”) on July 23, 2015, alleging that Defendant BNSF Railway Company violated the whistleblower protections of the Federal Rail Safety Act, codified at 49 U.S.C. § 20109.
2. OSHA completed its investigation into Dunn’s complaint and issued findings on September 19, 2016. In those findings, OSHA conveyed its determination that “the burden of establishing that [Dunn] was retaliated against in violation of the FRSA cannot be sustained” and therefore found that “there [was] no reasonable cause to believe that [BNSF] violated the FRSA.”
3. On October 12, 2016, Dunn timely objected to OSHA’s findings and requested a de novo hearing with the Department of Labor’s Office of Administrative Law Judges, pursuant to 29 C.F.R. § 1982.106.

- 1 4. On March 3, 2017, Dunn removed his claim to this Court by filing a *de novo* action
2 pursuant to 49 U.S.C. § 20109(d)(3).¹ The complaint was timely served on BNSF on
3 May 23, 2017.²
- 4 5. On June 13, 2017, BNSF filed a motion to dismiss Dunn's complaint pursuant to Fed. R.
5 Civ. P. 12(b)(6) and 12(b)(1).³ On August 25, 2017, this Court granted in part and denied
6 in part the motion to dismiss, directed Dunn to show cause within seven days why the
7 alternative-handling portion of the complaint should not be dismissed, and granted Dunn
8 leave to file an amended complaint within fourteen days.⁴ Dunn timely responded to the
9 show-cause order on August 31, 2017,⁵ and timely filed an amended complaint on
10 September 8, 2017.⁶
- 11 6. In the interim, BNSF timely moved for reconsideration of a portion of the Court's August
12 25 order.⁷ This Court denied that motion on September 7, 2017.⁸
- 13 7. On September 22, 2017, BNSF moved to dismiss portions of Dunn's amended complaint
14 pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6).⁹ That motion is currently noted for
15 October 27, 2017.¹⁰
- 16 8. As of the filing of this stipulation, BNSF has not filed an Answer in this Federal Court
17 action, nor a motion for summary judgment pursuant to Fed. R. Civ. P. 56.
- 18 9. Dunn has determined not to pursue this litigation further and elects to voluntarily dismiss
19 this action pursuant to Fed. R. Civ. P. 41(a). *See Swedberg v. Marotzke*, 339 F.3d 1139,
20 1146 (9th Cir. 2003) (stating that after a defendant has filed a motion to dismiss pursuant
21 to Rule 12(b)(6), "plaintiff is free to file a proper notice of dismissal pursuant to Rule
22 41(a)(1)").

23 ¹ ECF No. 1.

24 ² ECF No. 3.

25 ³ ECF No. 6.

26 ⁴ ECF No. 22.

27 ⁵ ECF No. 23.

28 ⁶ ECF No. 26.

⁷ ECF No. 24.

⁸ ECF No. 25.

⁹ ECF No. 27.

¹⁰ ECF No. 29.

1 10. Given Dunn's voluntary dismissal, BNSF agrees that its pending Motion to Dismiss is
2 moot.

3 11. Each party agrees to be responsible for its own costs and attorneys' fees associated with
4 this litigation.

5 **II. MOTION**

6 Both Dunn and BNSF are properly advised and agree with this Voluntary Dismissal. For
7 these reasons, both parties ask this Court to dismiss this action and all related motions as
8 proposed herein.

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Respectfully Submitted,

Dated: October 19, 2017

YAEGER & JUNGBAUER BARRISTERS, PLC

By: /s/ Christopher W. Bowman

William G. Jungbauer, admitted *pro hac vice*
Christopher W. Bowman, admitted *pro hac vice*
4601 Weston Woods Way
Saint Paul, MN 55127
Telephone: (651) 288-9500
Facsimile: (651) 288-0227
wgjgrp@yjblaw.com
cbowman@yjblaw.com

-and-

CROSTA LAW OFFICE

By: /s/ Bradley K. Crosta

Bradley K. Crosta, WSBA #10571
999 3rd Avenue, Suite 2525
Seattle, WA 98104-4032
Telephone: (206) 224-0900
Facsimile: (206) 223-3929
bcrosta@crostalaw.com

Attorneys for Plaintiff Lindsay Dunn

-and-

MONTGOMERY SCARP, PLLC

By: /s/ Kelsey Endres

Kelsey Endres, WSBA #39409
Tom Montgomery, WSBA #19998
1218 3rd Avenue, Suite 2500
Seattle, WA 98101
Telephone: (206) 625-1801
Facsimile: (206) 625-1807
kelsey@montgomeryscarp.com
tom@montgomeryscarp.com

Attorneys for Defendant BNSF Railway Co.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington, the State of Minnesota, and the United States of America that on October 19, 2017, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system that will send notification of such filing to the following counsel for defendant BNSF Railway Company:

Mr. William Thomas Montgomery
Ms. Kelsey Endres
MONTGOMERY SCARP, PLLC
1218 Third Avenue, Suite 2500
Seattle, WA 98111
Telephone: (206) 625-1801
Facsimile: (206) 625-1807
E-Mail: tom@montgomeryscarp.com
kelsey@montgomeryscarp.com

DATED this 19th day of October 2017, at Saint Paul, Minnesota.

/s/ Christopher W. Bowman
William G. Jungbauer
Christopher W. Bowman
YAEGER & JUNGBAUER BARRISTERS, PLC
4601 Weston Woods Way
Saint Paul, MN 55127
T: (651) 288-9500 F: (651) 288-0227

Attorneys for Plaintiff

HONORABLE JAMES ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LINDSAY DUNN,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
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Defendant

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~~PROPOSED~~ ORDER GRANTING
STIPULATION FOR VOLUNTARY
DISMISSAL

NOTING DATE: OCTOBER 19, 2017

Having considered the parties' Stipulation for Voluntary Dismissal Pursuant To Fed. R. Civ. P. 41 (ECF No. 30), IT IS HEREBY ORDERED that:

1. The above-captioned matter is DISMISSED without prejudice;
2. Defendant's pending Motion to Dismiss (ECF No. 27) is MOOT and, therefore, denied; and
3. Each party shall be responsible for its own costs and attorneys' fees.

DATED this 19th day of October, 2017.


JAMES L. ROBART
United States District Judge

1 Presented by:

2 YAEGER & JUNGBAUER BARRISTERS, PLC

3 By: /s/ Christopher W. Bowman

4 William G. Jungbauer, admitted *pro hac vice*

5 Christopher W. Bowman, admitted *pro hac vice*

6 4601 Weston Woods Way

7 Saint Paul, MN 55127

8 Telephone: (651) 288-9500

9 Facsimile: (651) 288-0227

10 wgjgrp@yjblaw.com

11 cbowman@yjblaw.com

12 -and-

13 CROSTA LAW OFFICE

14 By: /s/ Bradley K. Crosta

15 Bradley K. Crosta, WSBA #10571

16 999 3rd Avenue, Suite 2525

17 Seattle, WA 98104-4032

18 Telephone: (206) 224-0900

19 Facsimile: (206) 223-3929

20 bcrosta@crostalaw.com

21 *Attorneys for Plaintiff Lindsay Dunn*

22 -and-

23 MONTGOMERY SCARP, PLLC

24 By: /s/ Kelsey Endres

25 Kelsey Endres, WSBA #39409

26 Tom Montgomery, WSBA #19998

27 1218 3rd Avenue, Suite 2500

28 Seattle, WA 98101

Telephone: (206) 625-1801

Facsimile: (206) 625-1807

kelsey@montgomeryscarp.com

tom@montgomeryscarp.com

Attorneys for Defendant BNSF Railway Co.

~~Proposed~~ Order Granting Stip. for Dismissal – FRCP 41(a)

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Yaeger & Jungbauer Barristers, PLC
4601 Weston Woods Way
St. Paul, MN 55127
651-288-9500